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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92051532
Party	Defendant Juan B. Melendez III
Correspondence Address	Juan B. Melendez III 2008 Grant Ave #1 Redondo Beach, CA 90278 UNITED STATES DNShogun@gmail.com, juan@digitalninja.us, shogun@digitalninja.us
Submission	Other Motions/Papers
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Date	12/03/2009
Attachments	Rebuttal120209partII.pdf (4 pages)(348126 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

)	
)	
PICTURECODE, LLC)	Cancellation No. 92051532
)	
Petitioner,)	Mark: DIGITAL NINJA
)	Registration No.: 3,321,797
v.)	
)	
JUAN B. MELENDEZ III)	
)	
Respondent)	
)	

**REBUTTAL TO PETITIONER’S BRIEF IN OPPOSITION TO RESPONDENT’S MOTION TO AMEND
REGISTRATION**

The “Opposition to the Motion to Amend” filing should be dismissed as new information concerning the Section 7 Request to Amend has been provided by the Petitioner and as no Motion to Amend has been submitted within the Trial and Trademark Appeals Board Proceeding No: 92051532. The new information details, as stated previously by the Respondent, there had been no prior knowledge of a Petition to Cancel as suggested previously in the letter submitted on October 5th, 2009 by Attorney Katherine Klammer Madianos.

- A.** The Request to Amend was filed with the USPTO in good faith, prior to being served official notice of a Petition to Cancel as stated by the Petitioner. In the Petitioner’s document, “PETITIONER’S BRIEF IN OPPOSITION...KATHERINE KLAMMER MADIANOS IN SUPPORT”, Attorney Kenneth G. Parker states the “time stamp contained on Respondent’s *Section 7 Request to Amend* indicates that it was filed at **2:04:45 p.m. U.S. Eastern Time,**” which translates to **1:04 p.m. Central Standard Time.** In another document by the Petitioner, “PETITIONER’S NOTICE OF MOOTNESS...MOTION TO EXTEND TIME FOR ANSWER”, Attorney Katherine Klammer Madianos states, “Mr. Chan made no indication

that he was aware that we had filed the Petition to Cancel. As such, at approximately **1:58 p.m. Central Standard Time** on October 1, 2009 I sent an email to Mr. Chan". The

statements prove the Request to Amend was filed prior to any service of a Petition to Cancel *as previously suggested* by Attorney Katherine Madianos in the letter submitted on October 5th, 2009 or in the phone call she made to the USPTO referenced within it.

- B.** The Petitioner's opposition is meritless, as the letter submitted on October 30, 2009 and titled "**RESPONSE TO PICTURECODE LLC ATTORNEY LETTER**" was in response to the **LetterTTABreDigitalNinjaRequesttoAmend.pdf** document filed by the Petitioner on October 5th, 2009. To allege the submission is a Motion to Amend is over reaching. Within the title and contents of the letter exists a clear understanding of the difference between the Section 7 Request to Amend filed with the USTPO and a Motion to Amend filed within TTAB proceedings.
- C.** As the Section 7 Request to Amend was filed with the USTPO and there is no Motion to Amend, in response to Paragraph C of the filing **PETITIONER'S BRIEF IN OPPOSITION TO RESPONDENT'S MOTION TO AMEND REGISTRATION**, the Respondent realleges and incorporates herein by reference Paragraphs A and B above.
- D.** As the Section 7 Request to Amend was filed with the USTPO and there is no Motion to Amend, in response to Paragraph D of the filing **PETITIONER'S BRIEF IN OPPOSITION TO RESPONDENT'S MOTION TO AMEND REGISTRATION**, the Respondent realleges and incorporates herein by reference Paragraphs A and B above.

In conclusion, the Request to Amend was filed with the USTPO and *not the TTAB*, is titled "Section 7 Request to Amend" and *not a Motion to Amend*, and *knowingly filed in good faith without any prior knowledge of a Petition to Cancel*, and these facts have been acknowledged to be true by

statements made by the Petitioner. Thus, the “Opposition to Motion to Amend” should be disregarded and dismissed, on the grounds the Section 7 Request to Amend has been legitimized and as is evident no Motion to Amend has been entered. The Registrant remains confident within these proceedings, the Petitioners continuing accusations of Fraud, Abandonment, Non-Use, and Likelihood of Confusion regarding the use of the DIGITAL NINJA trademark 009 Class of Goods “Computer programs that edit images” will also be found as baseless and false.

Dated: November 6, 2009 Respectfully Submitted,
/Juan B. Melendez III/
Juan B. Melendez III
Registrant

CERTIFICATE OF TRANSMITTAL

I hereby certify that a true copy of the foregoing ANSWER TO PETITION TO CANCEL is being filed electronically with the TTAB via ESTTA on December 3, 2009.

/Juan B. Melendez III/
Juan B. Melendez III

CERTIFICATE OF SERVICE

Pursuant to C.R.F. § 2.111, I hereby certify that a true and correct copy of the foregoing Answer to Petition for Cancellation was served, via certified mail on December 2, 2009, on the following:

1. Petitioner, PictureCode, LLC, at the following address:
7610-B Highway 71 West
Austin, TX 78735

2. Petitioner's Attorney, Katherine Klammer Madianos, Esq., at the following address:
3606 Enfield Road
Austin, TX 78703

3. Petitioner's Co-Counsel, Kenneth G. Parker, Esq., at the following address:
3121 Michelson Drive, Suite 250
Irvine, CA 92612

/Juan B. Melendez III/
Juan B. Melendez III